IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.MC.No. 665 of 2007()

CRL.M.C.NO.175/07 OF THE SESSIONS COURT, ERNAKULAM.

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PETITIONER: DEFACTO COMPLAINANT

GOPALAKRISHNAN, S/O.DEVADAS,
NOW RESIDING AT CHULLAPARAMBIL HOUSE,
MANAKKAPADI, NORTH PARAVUR-683 511.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS: PETITIONER & RESPONDENT

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1. P.S.RAJENDRA PRASAD, S/O.SUBRAMANIAN,
VAZHAMPILLISSERIL HOUSE, THURUTHIPURAMKARA,
MOOTHAKUNNAM P.O.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING THE SUB INSPECTOR OF
POLICE, VADAKKEKARA POLICE STATION.

BY PUBLIC PROSECUTOR SRI.M.S. BREEZ
SRI.S.RAJKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 665 OF 2007

Dated this the 21st day of June, 2007

ORDER

The petitioner is the de facto complainant - the victim, in a crime registered, inter alia, under Sec.326 of the IPC. The alleged incident took place at 10.30 p.m. on 30/12/2006. The victim had gone to the hospital and was examined by a Doctor at 11 p.m. on 30/12/06. The alleged cause is narrated to the Doctor as assault by Rajendra Prasad (the accused herein) and two others with iron pipe. The victim had suffered multiple fracture. The victim is none other than the nephew of the respondent/accused.

2. The accused approached the learned Sessions Judge with an application for anticipatory bail and the learned Sessions Judge by order dated 1/2/2007 granted the prayer for anticipatory bail by the following cryptic order:

"Order

Since the petitioner is the uncle of the complainant, I am inclined to grant

anticipatory bail.

In the result, anticipatory bail is granted and it is ordered to release the petitioner on bail in the event of his arrest, on executing bond for Rs.10,000/- with two solvent sureties for the like sum to the satisfaction of the officer concerned. The bail as per this order will remain in force for two months from today."

3. It is submitted that pursuant to the order 1/2/07, the accused had surrendered before the learned Magistrate and was enlarged on bail without any conditions on 3/2/07. The accused is thus on bail now. He has not been interrogated by the Investigator. The weapon of offence has not been recovered.

4. It is, in these circumstances, that the de facto complainant has come before this Court with this petition. He complains that anticipatory bail was granted to the accused without proper application of mind at all by the learned Sessions Judge. This is traversity of justice. The persons who had committed such serious and heinous offence should not be allowed and permitted to claim anticipatory bail in such a

lighthearted manner. The learned Sessions Judge has not even considered whether the Investigator/police had any objection against the grant of bail. The nature of injuries has not been referred to. The antecedents of the accused (it is submitted that he is involved in several crimes) has not also been adverted to by the learned Sessions Judge at all. In these circumstances, the de facto complainant says that in the interests of justice, his grievance may be considered and anticipatory bail granted may be cancelled.

5. The learned Public Prosecutor, though the prosecution has not filed any application for cancellation of bail, virtually supports the plea for cancellation of bail. It is submitted that the Investigation has not proceeded significantly. The Investigator has not been given an opportunity to question the accused.

6. I must say that the order extracted above does disturb me considerably. Powers under Sec.438 of the Cr.P.C. do confer on the superior courts an extraordinary equitable discretion. Such discretion is not to be exercised as a matter of

course. The fact that the victim and the accused are nephew – uncle, is to my mind no reason by itself in a prosecution under Sec.326 of the IPC to justify the claim for anticipatory bail. To say the least, the learned Sessions Judge has acted perversely in proceeding to grant anticipatory bail without proper application of mind to all the relevant circumstances. I have no hesitation to agree that there has been no proper exercise of jurisdiction under Sec.438 of the Cr.P.C.

7. But, I must realistically note that the cancellation of the bail is an extraordinary harsh remedy which the court can appoint. The passage of time has to be taken note of. That there is no specific allegation of any abuse of the liberty granted to the accused has also got to be taken note of. I am not oblivious to the grievance raised by the petitioner that accused has subsequent to his release raised complaints against the de facto complainant as also the Investigating Officer. That apart, there is no specific allegation of any misuse of liberty by the accused after his release on bail.

8. At this point of time, I am satisfied that the anticipatory

bail by the Sessions Court and the consequent regular bail granted by the learned Magistrate need not be cancelled or upset. But I am certainly of opinion that appropriate conditions must be imposed on the accused in the interests of a fair, efficient and expeditious investigation.

9. In the result, this Crl.M.C. is allowed in part. The order of anticipatory bail passed by the learned Sessions Judge and the consequent regular bail granted by the learned Magistrate are not disturbed. But the following conditions are imposed on the accused:

(i) The accused shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 4 p.m. on 26/6/07 and 27/6/07. It shall be open to the Investigating Officer to interrogate the accused during this period and effect recoveries, if any.

(ii) The accused shall thereafter report before the Investigating Officer between 10 a.m. and 12 noon on all Mondays and Fridays until further orders.

10. The accused is present before this Court. He is

represented by counsel. These directions are conveyed to him. The accused shall appear before the Investigating Officer as directed above.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge